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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/769,034	01/30/2004	Kameswari S. Konduri	KSKO-25,661	7598

7590 11/24/2008
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EXAMINER

ART UNIT PAPER NUMBER

DATE MAILED: 11/24/2008

Please find below and/or attached an Office communication concerning this application or proceeding.

Notification of Non-Compliant Appeal Brief (37 CFR 41.37)	Application No. 10/769,034	Applicant(s) KONDURI ET AL.	
	Examiner KEVIN K. HILL	Art Unit 1633	

--The MAILING DATE of this communication appears on the cover sheet with the correspondence address--

The Appeal Brief filed on 09 October 2008 is defective for failure to comply with one or more provisions of 37 CFR 41.37.

To avoid dismissal of the appeal, applicant must file an amended brief or other appropriate correction (see MPEP 1205.03) within **ONE MONTH or THIRTY DAYS** from the mailing date of this Notification, whichever is longer.
EXTENSIONS OF THIS TIME PERIOD MAY BE GRANTED UNDER 37 CFR 1.136.

1. ☐ The brief does not contain the items required under 37 CFR 41.37(c), or the items are not under the proper heading or in the proper order.
2. ☐ The brief does not contain a statement of the status of all claims, (e.g., rejected, allowed, withdrawn, objected to, canceled), or does not identify the appealed claims (37 CFR 41.37(c)(1)(iii)).
3. ☐ At least one amendment has been filed subsequent to the final rejection, and the brief does not contain a statement of the status of each such amendment (37 CFR 41.37(c)(1)(iv)).
4. ☐ (a) The brief does not contain a concise explanation of the subject matter defined in each of the independent claims involved in the appeal, referring to the specification by page and line number and to the drawings, if any, by reference characters; and/or (b) the brief fails to: (1) identify, for each independent claim involved in the appeal and for each dependent claim argued separately, every means plus function and step plus function under 35 U.S.C. 112, sixth paragraph, and/or (2) set forth the structure, material, or acts described in the specification as corresponding to each claimed function with reference to the specification by page and line number, and to the drawings, if any, by reference characters (37 CFR 41.37(c)(1)(v)).
5. ☐ The brief does not contain a concise statement of each ground of rejection presented for review (37 CFR 41.37(c)(1)(vi)).
6. ☐ The brief does not present an argument under a separate heading for each ground of rejection on appeal (37 CFR 41.37(c)(1)(vii)).
7. ☒ The brief does not contain a correct copy of the appealed claims as an appendix thereto (37 CFR 41.37(c)(1)(viii)).
8. ☐ The brief does not contain copies of the evidence submitted under 37 CFR 1.130, 1.131, or 1.132 or of any other evidence entered by the examiner **and relied upon by appellant in the appeal**, along with a statement setting forth where in the record that evidence was entered by the examiner, as an appendix thereto (37 CFR 41.37(c)(1)(ix)).
9. ☐ The brief does not contain copies of the decisions rendered by a court or the Board in the proceeding identified in the Related Appeals and Interferences section of the brief as an appendix thereto (37 CFR 41.37(c)(1)(x)).
10. ☒ Other (including any explanation in support of the above items):

See Continuation Sheet.

/Q. JANICE LI, M.D./
Primary Examiner, Art Unit 1633

Continuation of 10. Other (including any explanation in support of the above items):

Regarding the Claim Appendix--Listing of Claims Involved in Appeal (Appeal Brief, pages 17-21), all claims and their appropriate status identifiers (Originally Presented, Amended, Withdrawn, Cancelled, etc.) should be present. In the instant case, claims 6-7, 14-15, 20-21, 31-32, 39-40, 46-47 and 50-51 are missing. The status for each and every claim is missing.

Appellant's brief presents arguments relating to the objections to the claims and their subsequent re-numbering by the Examiner, specifically Claims 28 and above. The numbering of claims is not in accordance with 37 CFR 1.126 which requires the original numbering of the claims to be preserved throughout the prosecution. When claims are canceled, the remaining claims must not be renumbered. When new claims are presented, they must be numbered consecutively beginning with the number next following the highest numbered claims previously presented (whether entered or not). Misnumbered claims 29-53 been renumbered 28-52. This issue relates to petitionable subject matter under 37 CFR 1.181 and not to appealable subject matter. See MPEP §1002 and §1201. The proper annotation of claim 28 is "28.", not "28.(29.)", for example.

Regarding the Provisional Rejection of Claims 1, 9-10, 12-13, 16-18, 34, 37-38, 41-42, 44-45 and 48-49 on the ground of non-statutory obviousness-type double patenting, Applicant is reminded that the rejection against Applicant's own co-pending application 11/442907 was necessitated by Applicant's amendments to the instant claims. Furthermore, Applicant is respectfully reminded that the claims of the co-pending application are directed to the carrier AND a method of treating a respiratory tract, not "to the carrier alone" (Appeal Brief, pg 5, line 2).

Regarding the rejection of Claims 1-2, 5, 8-13, 16-17 and 52 under 35 U.S.C. 103(a) as being unpatentable over Onyukse et al in view of Waldrep et al, as evidenced by Konduri et al, the Examiner withdraws claims 8-13 and 16-17 from this rejection (said limitations are rejected under 35 U.S.C. 102(b) by Onyukse et al). Applicant is respectfully reminded that the "newness" of the rejection is based upon Applicant's amendments to the claims and the withdrawal of the previous rejection upon consideration of Applicant's arguments.

For reasons set forth supra it is proper to make the last Office Action final, and the finality will be maintained.